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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 467

ROBERT R. KAUFMAN,
Petitioner

v.

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
Respondent.

PETITIONER'S REPLY TO BRIEF IN OPPOSITION TO GRANT OF CERTIORARI

MORTON LIFTIN
1819 H Street, N.W.
Washington, D.C. 20006

Attorney for Petitioner

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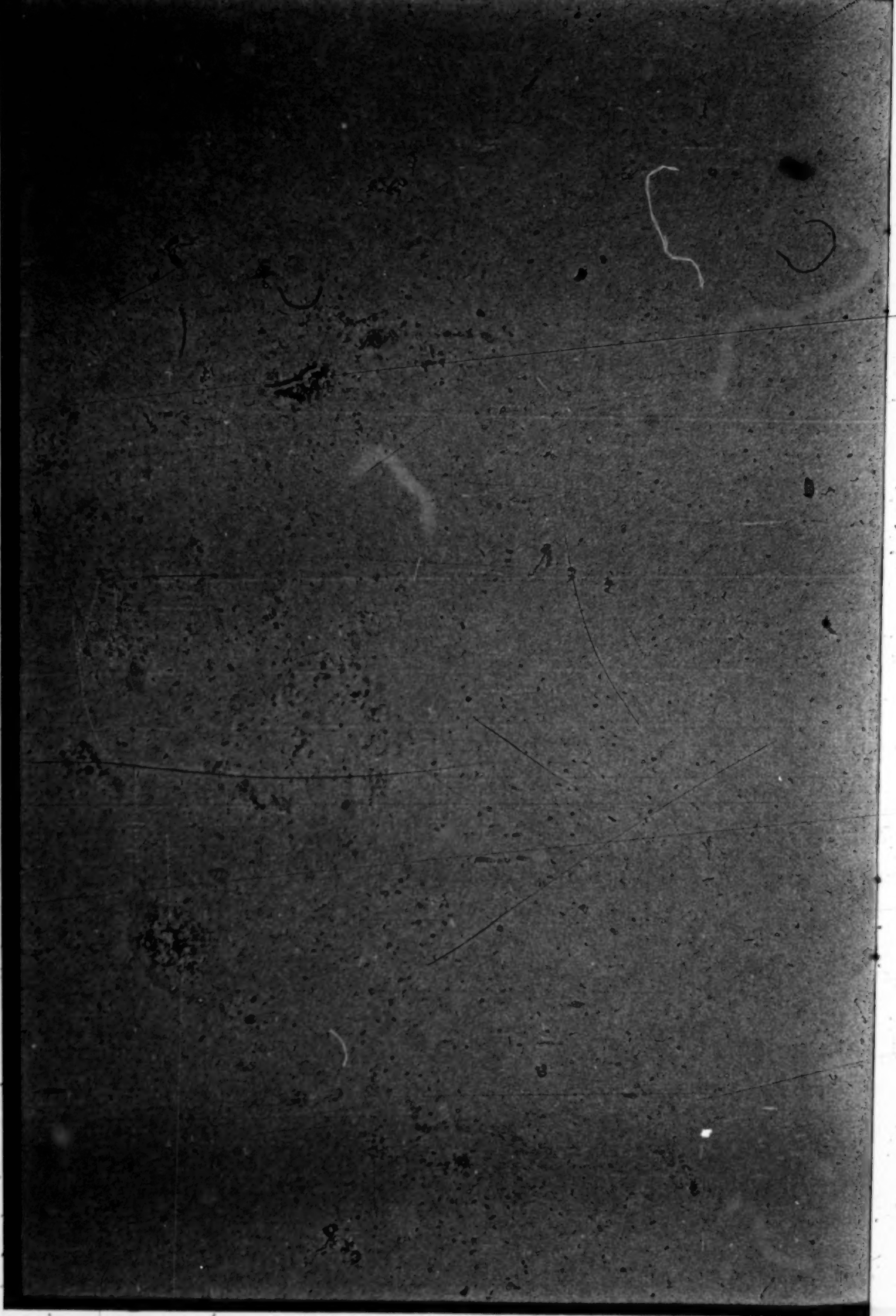

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Respondent opposes the grant of certiorari on the grounds (1) that the constitutional claim presented in the petition was not timely raised, and (2) that the claim is without merit because the adverse finding with respect to which petitioner claims he had no notice was not considered as a separate charge in the disciplinary proceedings but only in connection with a charge of which appropriate notice had been given.

1. The petition points out that this Court's decision in *In Re Ruffalo*, 390 U.S. 544, may be regarded as a supervening event which would render timely a raising of the

constitutional issue not previously urged in these proceedings. But the constitutional question is properly before this Court, in any event, for the reason that it was presented to both courts below and was considered on the merits. There is no suggestion in any of the orders below that petitioner's motion to recall the disbarment order was rejected because it did not comply with state procedural requirements or for any reason other than that it was deemed to be without merit. The order of the Court of Appeals dismissing the appeal recites as one ground for dismissal "That there is no substantial constitutional question directly involved" (Appendix to petition, p. 7). The motion for leave to appeal was denied by the Court of Appeals after "due deliberation thereupon had" (Ibid.). The order of the Appellate Division recites that the motion was denied after reading the order to show cause and the affidavits in support and in opposition thereto and after hearing the parties in support and in opposition thereto. (Id. at pp. 7-8). Consideration of the constitutional question by the state court is sufficient to preserve the question raised for presentation to this Court and removes any question of timeliness. *Louisville & Nashville R. Co. v. Higden,* 234 U.S. 592, 597-8; *Great Northern R. Co. v. Sunburst Oil Co.,* 287 U.S. 358, 366-7; *Ohio ex rel Bryant v. Akron Park District,* 281 U.S. 74, 79; *American Surety Co. v. Baldwin,* 287 U.S. 156, 162-4; *Wilson v. Cook,* 327 U.S. 474, 485.

2. The petition for certiorari sets forth the scope of the Referee's findings with respect to the so-called fraudulent assignments (pp. 2 to 4). It seems clear that these findings were made by the Referee to provide additional, independent grounds for disciplinary action and cannot fairly be rationalized on the grounds that they were relevant to another charge.

Respectfully submitted,

MORTON LIFTIN
1819 H Street, N.W.
Washington, D.C. 20006
Attorney for Petitioner